

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813
February 27, 2009

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

Lanai

Extension of cure period in Notice of Default, Authorize and Allow for Amendment of General Lease No.B-00-1, and after-the-fact approval of Assignment of Lease by Lanai Company, Inc. to Castle & Cooke Resorts, LLC, Manele Small Boat Harbor, Manele, County of Maui, Island of Lanai, Tax Map Key (2) 4-9-17:02

APPLICANT:

Castle & Cooke Resorts, LLC (CCR), a Domestic Limited Liability Company whose business and mailing address is 100 Kahelu Avenue, Floor 2, Mililani, Hawaii 96879.

LEGAL REFERENCE:

Sections 171-20, 36, and 53, Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

Portion of Government owned lands situated at Manele Small Boat Harbor, Island of Lana'i, identified by Tax Map Key: (2)4-9-17:06, consisting of 28,625 sq. ft., more or less, of submerged lands and 21,527 sq. ft., more or less, of fast lands, being portion of Governors Executive Order Nos. 2422 and 3111.

TRUST STATUS:

Section 5 (b) lands of the Hawaiian Admissions Act: YES X NO

DHHL 30% entitlement lands pursuant to the Hawaii State

Constitution: YES NO X

ZONING:

State Land Use District: Urban

County of Maui CZO: Open, Lanai Project District 1 (Manele)

CHARACTER OF USE:

Development, construction use and maintenance of twenty four (24) boat slips within the lease area, and utilities, paving, landscaping other associated improvements within the non-exclusive easement area.

LEASE TERM:

35 years, commencing on October 1, 2000, up to and including September 30, 2036.

RENTAL:

Minimum Annual Rental of \$4,140.00 or 15% of mooring fees, whichever is greater, payable quarterly.

RENT AND INSURANCE:

The Lessee is current with both obligations.

REMARKS

To address the increased need for more boat slips on Lanai, the 1996 Legislature adopted Senate Concurrent Resolution No. 16 which authorized the Board of Land and Natural Resources to lease certain submerged lands and to grant a non-exclusive easement over certain fast lands at Manele Small Boat Harbor to Lanai Company, Inc. for marina purposes. By way of a direct negotiation, General Lease No. B-00-1 ("Lease") was entered into on October 1, 2000, by and between the Board of Land and Natural Resources (Board) and the Lanai Company, Inc. (Lanai Co.) The Lease is provided as EXHIBIT # 1. Please also reference EXHIBIT # 2, the October 11, 1996 Land Board submittal J-1 which includes, the Senate Concurrent Resolution S.C.R. 16 (S.D. 1) and approved minutes. S.C.R. 16 (S.D. 1) provides the BLNR with general authority to lease land at Manele Small Boat Harbor "for the purposes of reclamation, development, construction, use, and maintenance of at least twenty-four berthing facilities for water craft and other improvements, approximately one acre of submerged land, and such other acreage as may be necessary for development and maintenance of other ancillary facilities and improvements."

On December 31, 2000, Lanai Company, Inc. and Castle & Cooke Resorts, LLC ("CCR") merged, with CCR becoming the successor entity, herein referred to as the Lessee. Lanai Co. did not obtain approval of the assignment of this lease at that time. CCR now requests an after-the-fact approval of the assignment. Please see EXHIBIT #3

General Lease B-00-1 requires that the Lessee obtain permits and approvals for design and construction of certain improvements in the submerged and fast lands and that full utilization of the property to occur within the first year of the lease term. The Lessee had not complied with this provision. The Lessee had not obtained the necessary Federal, State or County permits and clearances for their proposed improvements. Further, the Lessee did not build the marina, boat slips, and additional improvements within the time period specified. Accordingly, the State issued a Notice of Default on December 12, 2007, please see attached EXHIBIT # 4.

TABLE I below, provides a list of the original additional improvements that were to be built by the Lessee along with the new marina as provided in the Lease (§52. Additional Improvements and §53. Non-exclusive easement area). The Lessee was required to provide and maintain utilities, pay for electricity, water and sewer charges based on usage within the submerged lease area and non-exclusive easement area. TABLE I also shows the improvements that are incomplete, and those that have been completed by the State as part of its Federal Ferry Project.

TABLE I

| Lease requirements for CCRL to build additional improvements within the Easement area | Completed by Lessee | Completed by State/FTA |
|---|---------------------|------------------------|
| Paved parking area | No | Yes |
| Landscaping Picnic area | No | Yes |
| Utilities- Electrical | No | Yes |
| -Water | No | Yes |
| -Telephone | No | Yes |
| Improvements to Rock Groin | No | No |
| Improved Boat Wash Pad | No | Yes |

Subsequent to the execution of the Lease, the State, with assistance from the Federal Transit Administration, made the improvements listed above. As noted previously, these improvements were to be constructed by the Lessee under the terms and conditions of the Lease. At this time, the Lessee is agreeable to move ahead to construct the boat marina in the submerged leased area in accordance with the Lease and is also agreeable to repair and maintain certain improvements constructed by the State and other improvements installed by the Lessee, if its default of the Lease obligations stated in this submittal are cured or resolved by settlement. It is believed that the proposed settlement that involves amendments to the Lease is consistent with the approval provided by the Legislature in S.C.R. 16 (S.D. 1). Please reference the proposed settlement letter dated May 15, 2008 shown as EXHIBIT # 5, which proposes amendments to the Lease that were discussed and agreed upon in principle by Mr. Harry Saunders, President of CCR, and Laura Thielen, Chairperson of the Department of Land and Natural Resources. The Lessee has requested a six (6) year time extension to construct the marina boat slips and related improvements in both the submerged leased area and non-exclusive easement. CCR shall be expected to be actively engaged in building the improvements during this time, and staff recommends that CCR provide regular annual updates to the Chairperson as to its progress by December 31st of each year.

In addition, as part of the settlement, the State has requested that the Lessee repair and maintain certain improvements made by the State in an area adjacent to the non-exclusive easement. CCR is willing to complete all improvements not later than December 31, 2014 (calculated at the time of the letter) and assume the repair and maintenance duties set forth in TABLE II, below, upon execution of the Lease amendment. As reflected in the May 15, 2008 settlement letter, TABLE II below summarizes the negotiated Lessee's and the State's repair and maintenance obligations for improvements made by the State in and adjacent to the non-exclusive easement.

TABLE II

| Newly Constructed Improvements at Manele Small Boat Harbor | Responsible Party |
|---|--------------------------|
| New comfort station, maintenance, custodial/janitorial services (i.e., cleaning, the stocking of adequate supplies, such as paper towels, bath tissue, etc.) In addition, perform nonstructural repairs up to \$1,000 maximum per individual repair, with annual limit not to exceed \$5,000 for repairs. See Exhibit 5-A. Lessee shall not be obligated to repair damages resulting from defects in the State's original design or construction of the new comfort station, nor shall Lessee be obligated to repair damages resulting from the willful misconduct of others (such as an act of vandalism). | Lessee |
| New comfort station, repair costs that exceed \$1,000 maximum per individual repair; costs paid for by the State, repairs performed by Lessee. | State |
| Ferry Boarding Shelter. See Exhibit 5-A. | Lessee |
| Roads "A", "B". See Exhibit 5-A. | Lessee |
| Road "F". See Exhibit 5-A. | Lessee |
| Ferry parking area | State |
| Accessible and bus parking in non-exclusive easement. See Exhibit 5-A. | Lessee |
| Ferry Boarding/station shelter | Lessee |
| Water line "A" and "C", including fire hydrants, valves, laterals and appurtenances. See Exhibits 5-C & 5-D. | Lessee |
| All other water lines, including fire hydrants, valves, laterals and appurtenances | State |
| Sewer line "B", including sewer manholes and appurtenance. See Exhibit 5-B. | Lessee |
| Sewer pump station, sewer lines from the sewer pump station to the Hulupoe Pump Station, including sewer manholes and appurtenances | State |
| Electrical conduits and lines, including lighting and outlets within the Premises and Easement area, from the new Administration building to the mini-park. See Exhibit 5-E. | Lessee |
| Telephone conduits and lines from the new Administration building to the mini-park. | Lessee |
| Mini-park. See Exhibit 5-F. | Lessee |

Map Exhibits 5-A through 5-F referenced in TABLE II above may be found within EXHIBIT # 5.

In addition to the items listed in TABLE II, above, and as part of the settlement, the Lessee is also agreeable to constructing, operating and maintaining additional improvements, including but not limited to a new fuel dock, dispensers, fuel lines, fuel tanks, appurtenances, related improvements within the premises. Furthermore the Lessee shall also move ahead to install and maintain landscaping along the entry roadway as well as within the non-exclusive easement area. Please see page three of EXHIBIT #5 which States, "In addition, CCR will be required to install sub-meters and pay for electricity, water and sewer charges based on usage within the Premises, Non-exclusive easement area and areas maintained by CCR, including the new comfort station, unless CCR can submeter the new comfort station separately and in that case the State will pay the electrical & water for the new comfort station". CCR will install at their cost all submeters.

Staff supports in concept Lessee's proposal to install, maintain, and operate fuel facilities at Manele Small Boat Harbor. However, because the proposed fuel tanks would be located outside of the non-exclusive easement area and the location of which has not yet been identified, a separate lease agreement would be needed. DOBOR will return to the Board at a later date to pursue Board approval for a lease by direct negotiation for additional space for these improvements.

The majority of the people entering and leaving the Island of Lanai do so by way of the new ferry facility, utilizing the new improvements within Manele Small Boat Harbor. The Division of Boating and Ocean Recreation does not have the staff and means to immediately maintain these new improvements at present. As part of this settlement, CCR has agreed to the repair and maintenance of certain improvements made by the State, in and adjacent, to the non-exclusive easement. Staff recommends the Board authorize the Department to approve the settlement and amend the conditions of Lease B-00-1 to include the agreed upon repair and maintenance of certain improvements made by the State in an area adjacent to the non-exclusive easement area. Should the Board concur, DOBOR shall work with the Attorney General's office to prepare an amendment to the Lease that would include the items listed above to be executed by the Chairperson.

RECOMMENDATION: That the Board authorize and approve:

1. The six (6) year time extension to December 31, 2015 to cure the default and construct boat slips and related improvements as set forth in the Lease;
2. The Chairperson to execute an Amendment to the Lease consistent with the proposed settlement described above;
3. Assignment of the Lease to Castle and Cooke Resorts, LLC;
4. As a condition to the above, the Lessee shall immediately commence repair and maintenance activity as described above;
5. Such other terms and conditions as prescribed by the Chairperson to best serve the interests of the State; and;
7. Subject to review and approval by the Attorney General.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:


Laura H. Thielon
Chairperson